

## **REMARKS**

### **Summary**

Claims 1, 3-15 and 17-23 stand in this application. Claims 2 and 16 have been canceled without prejudice. Claims 1, 3, 8, 12, 15, 17, 22 and 23 have been amended. No new matter has been added. Favorable reconsideration and allowance of the standing claims are respectfully requested.

Although Applicant disagrees with the broad grounds of rejection set forth in the Office Action, Applicant has amended claims 1, 3, 8, 12, 15, 17, 22 and 23 in order to facilitate prosecution on the merits.

### **35 U.S.C. § 101**

At page 4 of the Office Action claims 15-21 stand rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Applicant respectfully traverses this rejection and requests reconsideration and withdraw of the non-statutory subject matter rejection.

The Office Action states that “the claimed invention to an ‘article’ doesn’t fall within the allowed categories of patent eligible subject matter...” Applicant respectfully disagrees. Applicant respectfully submits that claim 15 has been amended to recite:

An article comprising:  
a computer readable storage medium;  
said computer readable storage medium including stored instructions that, when executed by a processor, result in performing voice detection, by receiving a frame of information, and determining whether said frame comprises voice information using a fuzzy logic algorithm and by measuring at least one characteristic of said frame and

generating at least one frame value based on said  
measurements.

Applicant respectfully submits that the above recited language of claim 15, as amended, is directed to statutory subject matter. Therefore, removal of the non-statutory subject matter rejection is respectfully requested.

**35 U.S.C. § 102**

At page 2 of the Office Action claims 1-5, 7, 12-19 and 21-23 stand rejected under 35 U.S.C. § 102 as being anticipated by Cavallaro et al. "A Fuzzy Logic Based Speech Detection Algorithm for Communications in Noisy Environments," Proceedings of the 1998 IEEE International Conference on Acoustics, Speech, and Signal Processing, May 12-15, 1998, Vol. 1, Pages 656-668 ("Cavallaro"). Applicant respectfully traverses the rejection, and requests reconsideration and withdrawal of the anticipation rejection.

Applicant respectfully submits that to anticipate a claim under 35 U.S.C. § 102, the cited reference must teach every element of the claim. *See* MPEP § 2131, for example. Applicant submits that Cavallaro fails to teach each and every element recited in claims 1, 3-5, 7, 12-15, 17-19 and 21-23 and thus they define over Cavallaro. For example, with respect to claim 1, Cavallaro fails to teach, among other things, the following language:

...measuring at least one characteristic of said frame and  
generating at least one frame value based on said  
measurements.

According the Office Action, this language is disclosed by Cavallaro at paragraph 2.

Applicant respectfully disagrees.

Applicant respectfully submits that Cavallaro fails to teach, suggest or disclose the missing language. Cavallaro at the given cite, in relevant part, states:

The FVAD translates several individual parameters into a signal continuous value which, in our case, indicates the degree of membership in the Activity class and the complement of the degree of membership in the Non Activity class.

In contrast, the claimed subject matter teaches "...measuring at least one characteristic of said frame and generating at least one frame value based on said measurements."

Applicant respectfully submits that this is different than the above recited teaching of Cavallaro.

Applicant respectfully submits translating individual parameters into a signal value, as arguably taught by Cavallaro, is different than "...measuring at least one characteristic of said frame and generating at least one frame value based on said measurements" as recited in claim 1. Consequently, Cavallaro fails to disclose all the elements or features of the claimed subject matter. Accordingly, Applicant respectfully requests removal of the anticipation rejection with respect to claim 1. Furthermore, Applicant respectfully requests withdrawal of the anticipation rejection with respect to claims 3-5 and 7, which depend from claim 1 and, therefore, contain additional features that further distinguish these claims from Cavallaro.

Claims 12, 15 and 22 recite features similar to those recited in claim 1. Therefore, Applicant respectfully submits that claims 12, 15 and 22 are not anticipated and are patentable over Cavallaro for reasons analogous to those presented with respect to claim 1. Accordingly, Applicant respectfully requests removal of the anticipation rejection with respect to claims 12, 15 and 22. Furthermore, Applicant respectfully requests

withdrawal of the anticipation rejection with respect to claims 13, 14, 16-19, 21 and 23 that depend from claims 12, 15 and 22 respectively, and therefore contain additional features that further distinguish these claims from Cavallaro.

### **35 U.S.C. § 103**

At page 3 of the Office Action claims 6, 8-11 and 20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Cavallaro in view of United States Patent Number 6,990,194 to Mikesell et al. ("Mikesell"). Applicant respectfully traverses the rejection, and requests reconsideration and withdrawal of the obviousness rejection.

The Office Action has failed to meet its burden of establishing a *prima facie* case of obviousness. According to MPEP § 2143, three basic criteria must be met to establish a *prima facie* case of obviousness. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). See MPEP 706.02(j).

As recited above, to form a *prima facie* case of obviousness under 35 U.S.C § 103(a) the cited references, when combined, must teach or suggest every element of the claim. See MPEP § 2143.03, for example. Applicant respectfully submits that the Office Action has not established a *prima facie* case of obviousness because the cited references,

taken alone or in combination, fail to teach or suggest every element recited in claims 6, 8-11 and 20. Therefore claims 6, 8-11 and 20 define over Cavallaro and Mikesell whether taken alone or in combination.

Applicant respectfully submits that claim 8 has been amended to recite features similar to those recited in claim 1. As recited above, Applicant respectfully submits that Cavallaro fails to teach, suggest or disclose each and every element recited in claim 1. Moreover, Applicant respectfully submits that Mikesell also fails to teach the missing language. Therefore, Applicant respectfully submits that claim 8 is not obvious and is patentable over Cavallaro and Mikesell for reasons analogous to those presented with respect to claim 1 above. Accordingly, Applicant respectfully requests removal of the obviousness rejection with respect to claim 8. Furthermore, Applicant respectfully requests withdrawal of the obviousness rejection with respect to claims 9-11 that depend from claim 8, and therefore contain additional features that further distinguish these claims from Cavallaro and Mikesell.

Furthermore, if an independent claim is non-obvious under 35 U.S.C. § 103, then any claim depending therefrom is non-obvious. *See* MPEP § 2143.03, for example. As recited above, Applicant respectfully submits that Cavallaro fails to teach, suggest or disclose each and every element recited in claims 1 and 15. Moreover, Applicant respectfully submits that Mikesell also fails to teach the missing language. Accordingly, Applicant respectfully submits that claims 6 and 20 also are non-obvious and patentable over Cavallaro and Mikesell, taken alone or in combination, at least on the basis of their dependency from claims 1 and 15. Applicant, therefore, respectfully requests the removal of the obviousness rejection with respect to these dependent claims.

For at least the reasons given above, claims 6, 8-11 and 20 are non-obvious and represent patentable subject matter in view of the cited references, whether taken alone or in combination. Accordingly, removal of the obviousness rejection with respect to claims 6, 8-11 and 20 is respectfully requested. Further, Applicant submits that the above-recited novel features provide new and unexpected results not recognized by the cited references. Accordingly, Applicant submits that the claims are not anticipated nor rendered obvious in view of the cited references.

Applicant does not otherwise concede, however, the correctness of the Office Action's rejection with respect to any of the dependent claims discussed above. Accordingly, Applicant hereby reserves the right to make additional arguments as may be necessary to further distinguish the dependent claims from the cited references, taken alone or in combination, based on additional features contained in the dependent claims that were not discussed above. A detailed discussion of these differences is believed to be unnecessary at this time in view of the basic differences in the independent claims pointed out above.

Appl. No. 10/665,859  
Response Dated May 21, 2007  
Reply to Office Action of February 20, 2007

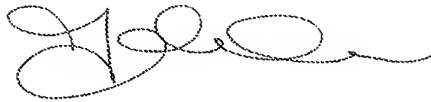
Docket No.: 1020.P16468  
Examiner: Abebe, Daniel Demelash  
TC/A.U. 2626

It is believed that claims 1, 3-15 and 17-23 are in allowable form. Accordingly, a timely Notice of Allowance to this effect is earnestly solicited.

The Examiner is respectfully requested to contact the undersigned by telephone if such contact would further the examination of the present patent application.

Respectfully submitted,

KACVINSKY LLC

A handwritten signature in black ink, appearing to read 'John F. Kacvinsky', with a long horizontal flourish extending to the right.

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John F. Kacvinsky, Reg. No. 40,040  
Under 37 CFR 1.34(a)

Dated: May 21, 2007

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